

SUPREME COURT OF NEBRASKA

State v. Trice

286 Neb. 183 (2013) · No. No. S-12-126 · Decided July 5, 2013

SUMMARY

The Nebraska Supreme Court held that a jury instruction requiring the jury to consider second degree murder before sudden quarrel manslaughter was erroneous under the court’s intervening decision in State v. Smith. Because the record contained some evidence that the defendant acted upon a sudden quarrel, the court found plain error and reversed the conviction for a new trial. The court further held that the evidence was sufficient to permit retrial without violating double jeopardy.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Connolly, J.; Wright, J.; Stephan, J.; McCormack, J.; Miller-Lerman, J.; Cassel, J.; Moore, Judge
JURISDICTION	Nebraska
DECIDED	July 5, 2013
DOCKET	No. S-12-126
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Trice appealed his jury conviction for second degree murder after the district court gave a step instruction directing the jury to consider manslaughter only if it first failed to find the elements of second degree murder.
STANDARD OF REVIEW	The court may notice plain error at its option. When the law at trial was settled but clearly contrary to the law at the time of appeal, an error is sufficiently plain if it was plain when considered on appeal.
PRECEDENTIAL VALUE	Published Nebraska Supreme Court opinion; precedential.
PARTIES	De’Aris R. Trice v. State of Nebraska

TOPICS

- jury instructions
- criminal procedure
- double jeopardy
- appellate procedure
- preservation of error

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the district court committed plain error by giving a step instruction that required the jury to reject second degree murder before considering sudden-quarrel manslaughter.
2. Whether *State v. Smith*'s rule that an intentional killing may constitute sudden-quarrel manslaughter applied retroactively to Trice's case, which was pending on direct review.
3. Whether the evidence was sufficient to permit a retrial consistent with the Double Jeopardy Clause.

HOLDINGS

1. A new criminal rule that constitutes a clear break with the past applies retroactively to all cases pending on direct review or not yet final, not merely to the defendant in the case announcing the rule.
2. A step instruction is erroneous when it requires the jury to convict on second degree murder upon finding an intentional but unpremeditated killing before allowing consideration of whether the killing was intentional but provoked by a sudden quarrel and therefore manslaughter.
3. A sudden quarrel is legally sufficient provocation causing a reasonable person to lose normal self-control; it does not require an exchange of angry words, a contemporaneous altercation, physical struggle, or corporal contact between the defendant and victim.
4. Plain error exists where an error is plainly evident from the record, was not raised at trial, prejudicially affects a substantial right, and is sufficiently serious that leaving it uncorrected would cause a miscarriage of justice or damage the integrity, reputation, and fairness of the judicial process.
5. The Double Jeopardy Clause does not bar retrial when the totality of the evidence admitted at trial, whether admitted erroneously or not, was sufficient to sustain a guilty verdict.

KEY QUOTATIONS

"A new criminal rule—one that constitutes a clear break with the past—applies retroactively to all cases pending on direct review or not yet final, and not just to the defendant in the case announcing the new rule."
(at 188-189)

"A 'sudden quarrel' is a legally recognized and sufficient provocation which causes a reasonable person to lose normal self-control." (at 190)

"Plain error exists where there is error, plainly evident from the record but not complained of at trial, which prejudicially affects a substantial right of the litigant and is of such a nature that to leave it uncorrected would cause a miscarriage of justice or result in damage to the integrity, reputation, and fairness of the judicial process." (at 192)

FACTUAL BACKGROUND

At an after-hours party in Norfolk, Nebraska, Timothy Warren became involved in a fight in which he was stabbed and later died. Witnesses differed about the participants and Trice's involvement, but two witnesses

testified that they saw Trice stab Warren, and other witnesses recounted statements by Trice acknowledging that he had stabbed or cut someone. The trial evidence also indicated that a broader brawl occurred and that Trice may have acted while attempting to protect himself and his brother.

PROCEDURAL HISTORY

A Madison County jury convicted Trice of second degree murder, and the district court sentenced him to 40 years to life in prison. The Nebraska Supreme Court noticed plain error in the jury instruction because *State v. Smith*, decided after trial, established that an intentional killing could constitute sudden-quarrel manslaughter. The court reversed and remanded for a new trial after determining that the evidence was sufficient to permit retrial without violating double jeopardy.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand for a new trial on the second degree murder and manslaughter charges, with proper instructions regarding the relationship between intentional second degree murder and sudden-quarrel manslaughter.

CASES CITED

- *State v. Jones*, 245 Neb. 821, 515 N.W.2d 654 (1994)
- *State v. Burlison*, 255 Neb. 190, 583 N.W.2d 31 (1998)
- *State v. Smith*, 282 Neb. 720, 806 N.W.2d 383 (2011)
- *State v. Merchant*, 285 Neb. 456, 827 N.W.2d 473 (2013)
- *State v. Nadeem*, 284 Neb. 513, 822 N.W.2d 372 (2012)
- *State v. Smith*, 284 Neb. 636, 822 N.W.2d 401 (2012)
- *State v. Watt*, 285 Neb. 647, ___ N.W.2d ___ (2013)
- *State v. Harris*, 27 Kan. App. 2d 41, 998 P.2d 524 (2000)
- *State v. Ruscingno*, 217 N.J. Super. 467, 526 A.2d 251 (1987)
- *State v. Brown*, 285 Kan. 261, 173 P.3d 612 (2007)
- *State v. Sandoval*, 280 Neb. 309, 788 N.W.2d 172 (2010)
- *State v. Abram*, 284 Neb. 55, 815 N.W.2d 897 (2012)

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